

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NORTH CAROLINA
EASTERN DIVISION

No. 4:10-CR-8-1-F

UNITED STATES OF AMERICA

v.

CORNELL BREON RILLEY HARPER,
Defendant.

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ORDER

This matter is before the court on the defendant's "Motion to Reconsider by the Court Defendant's Motion to Withdraw Guilty Plea" [DE-53]. In the incorporated memorandum of law, the defendant ably sets forth the legal and factual bases for his motion. In short, the defendant seeks to withdraw his guilty plea in anticipation of the Fourth Circuit Court of Appeals' eventual ruling on remand from *United States v. Simmons*, No. 130 S. Ct. 3455 (June 21, 2010). The *Simmons* opinion is expected to address, head on, the continued viability of the Fourth Circuit's analysis set forth in *United States v. Harp*, 406 F.3d 242 (4th Cir. 2005), in light of the Supreme Court's ruling in *Carachuri-Rosendo v. Holder*, ___ U.S. ___, 130 S. Ct. 2577 (2010).

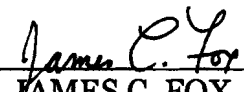
The undersigned is informed that the appellate court has scheduled oral argument in *Simmons* before the end of the year. Nevertheless, when and how *Simmons* will be decided is a matter of speculation, and the undersigned is unwilling to postpone sentencing indefinitely.

As the Government has explained in its Response [DE-55] filed in opposition to Harper's motions, this court is bound by Fourth Circuit precedent unless

and until it is overturned or replaced. Accordingly, the defendant's Motion to Reconsider denial of his Motion to Withdraw Guilty Plea [DE-53], and his Motion to Continue Sentencing [DE-54] are DENIED.

SO ORDERED.

This, the 30th day of September, 2010.



JAMES C. FOX
Senior United States District Judge